

DEPARTMENT OF ENERGY  
DELEGATION ORDER NO. 0204-126  
TO THE ADMINISTRATOR OF THE ECONOMIC  
REGULATORY ADMINISTRATION

Pursuant to the authority vested in me as Secretary of Energy (“Secretary”) and by the Department of Energy Organization Act (Pub. L. 95-91) (the “DOE Act”) --

- (a) There is hereby delegated to the Administrator of the Economic Regulatory Administration (“ERA”), the authority to perform the following functions:
1. The enforcement of the regulatory programs concerning the allocation and pricing of crude oil, residual fuel oil, and refined petroleum products, pursuant to the provisions of the Emergency Petroleum Allocation Act of 1973 (“EPAA”) (Pub. L. 93-159), as amended, 15 U.S.C. Section 751 et. seq. or the Economic Stabilization Act of 1970 (“ESA”) (Pub. L. 92-210), as amended, 12 U.S.C. Section 1904 note;
  2. The requesting of the Attorney General of the United States to bring an action in the appropriate district court of the United States: (A) to enjoin any act or practice constituting a violation of any order or regulation issued by the Department of Energy, or its predecessor agencies, pursuant to the EPAA, including the authorities set forth in the ESA, and vested in the Secretary by Executive Order No. 11790, and to seek the restitution of monies received in violation of any such order or regulation, as well as any civil penalties: and (B) to investigate potential criminal violations of any such order or regulation;
  3. The issuance of Proposed Remedial Orders, or Modified Remedial Orders, for the violation of any regulation or order having the effect of a rule promulgated pursuant to the EPAA, or any Phase II, III or IV regulation or order having the effect of a rule promulgated pursuant to the ESA;
  4. The conduct of proceedings relating to issued Notices of Probable Violation;
  5. The representation, exclusive of that provided by the General Counsel, of DOE and ERA in all administrative and judicial proceedings, including, but not limited to, those arising from the issuance of the above described enforcement documents and any administrative proceedings appealed to the Federal Energy Regulatory Commission (“FERC”) pursuant to the provisions of Section 503 of the DOE Act;
  6. The initiation and conduct of investigations, when necessary and incidental to the exercise of any authority delegated herein, in response to complaints or other information; the conduct of conferences, administrative hearings or public hearings with respect to the functions delegated in this Order, and the administration of

oaths and affirmations to any person, and the suspension or disqualification of any person, appearing at such conference or hearing; the issuance of subpoenas and special report orders; the authorization of payment, if appropriate, of witness fees and mileage to any witness appearing in response to such subpoenas; and the taking of such other action as may be necessary and appropriate to assure and determine the extent of compliance with DOE rules and regulations described herein and any order having the effect of a rule issued thereunder;

7. The conduct of all negotiations intended to resolve, by compromise or otherwise, violations of any regulation or order having the effect of a rule promulgated pursuant to the EPAA or the ESA, the entering into and execution of Consent Orders and agreements providing for compromise payments in lieu of the payment of civil penalties, and the taking of other appropriate action on behalf of DOE to resolve such matters;
8. The taking of action to resolve compliance with final agency orders issued pursuant to the provisions of the EPAA or the ESA, including collection activities, the referral of cases to the Justice Department for the initiation of judicial enforcement, and, where appropriate, the modification and/or reduction of financial terms or closing of delinquent accounts;
9. The assertion of any available privilege, including the deliberative process privilege, in cases in which ERA is representing the Department, where courts may require claims to be made formally by an affidavit from an agency official, in order to protect Department of Energy documents in judicial or administrative proceedings;
10. The intervention or other participation on behalf of the Secretary in proceedings relating to the authorities exercised by ERA, before any federal or state agency or commission whenever it is determined that the interests of the Secretary should be represented in such proceedings;
11. The adoption of rules, the formulation and establishment of enforcement policy, the preparation of required reports, the issuance of orders, and the collection of fees;
12. The taking of such other action as the Secretary or his authorized delegate may, from time to time, direct or authorize;
13. The taking of such other action as may be necessary and appropriate to perform any of the above functions.

- (b) The authority delegated to the Administrator of ERA may be further delegated, in whole or in part, as may be appropriate, provided that the Administrator shall not further delegate, in whole or in part, the authority to propose or adopt rules.
- (c) In exercising the authority delegated by this Order or as redelegated pursuant thereto, the Administrator and his delegate(s) shall be governed by the rules and regulations of DOE and policies and procedures prescribed by the Secretary and, as a separate first-tier organization, shall report to the Secretary through the General Counsel.<sup>1</sup>
- (d) In exercising the authority delegated by this Order, the Administrator shall provide by rule for a separation of the regulatory and enforcement functions of the Economic Regulatory Administration, in accordance with Section 206(a) of the DOE Act.
- (e) Delegation Order No. 0204-4 is revoked and the delegation of authority in that order is superseded by the delegation of authority in this order and Delegation Order No. 0204-127.
- (f) All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended to superseded.
- (g) Nothing in this Order shall preclude the Secretary from exercising any of the authorities hereby delegated, whenever in his judgment the exercise of such authority is necessary or appropriate to administer the functions vested in him.

This Order is effective February 7, 1989.

\_\_\_\_\_/s/\_\_\_\_\_  
Donna R. Fitzpatrick  
Acting Secretary of Energy

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<sup>1</sup> On June 17, 1989 the Secretary approved an Action Memorandum that specified that the ERA shall report directly to the Secretary.